IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No.15960 of 2005(S)

OA.660/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

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PETITIONER:

K.JOSEKUTTY, SENIOR TEACHER,
UNDER DIRECTOR GENERAL, ASSAM RIFLES, SHILLONG-11,
RESIDING AT FLAT NO.410, ARMY WELFARE HOUSING ORGANIZATION, PARASANNA VIHAR,
OPP: HIGH COURT, KOCHI-31.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:

1. **UNION OF INDIA, REP. BY SECRETARY,**
   MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
   NEW DELHI.

2. **THE DIRECTOR GENERAL, ASSAM RIFLES,**
   SHILLONG-11.

3. **DEPUTY DIRECTOR GENERAL,**
   ASSAM RIFLES, SHILLONG-11, MEGHALAYA.

BY ADV. SRI.VARGHESE J.PUNNACHALIL,ADDL.CGSC
SRI.THOMAS MATHEW NELLIMOOTTIL,SR.P.ARM
SRI.P.PARAMESWARAN NAIR, ASST.SG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1:- TRUE COPY OF THE ORDER DT.17/09/04 IN O.A. NO.660/02 OF THE CAT, ERNAKULAM BENCH.

EXT.P2:- A TRUE COPY OF THE PRESENT PART II ORDER NO.35/CIV/2001 - LAST PART II ORDER 34/CIV/2001 DATED 20/04/01 ISSUED BY THE RESPONDENT.

EXT.P3:- A TRUE COPY OF THE ORDER NO.GS(EDN)/IV-MISC/T/2005 DT.11/04/05 ISSUED BY THE RESPONDENT.

EXT.P3(a):- A TRUE COPY OF COVERING LETTER NO.GS(EDN)/IV-MISC/T/2005/16 DT.21/04/05 OF THE RESPONDENT FORWARDING EXT.P3.

EXT.P4:- TRUE COPY OF THE O.A. NO.318/05 FILED BY THE PETITIONER BEFORE CAT ERNAKULAM.

EXT.P5:- TRUE COPY OF CONTEMPT PETITION NO.55/05 FILED BEFORE THE CAT, ERNAKULAM.

EXT.P6:- TRUE COPY OF ORDER DT.14/11/05 PASSED IN CPC NO.55/05 BY THE CAT.

EXT.P7:- TRUE COPY OF M.A. NO.1138/05 FILED BEFORE THE CAT ERNAKULAM.

EXT.P8:- TRUE COPY OF ORDER NO.GS(EDN)IV/MISC/T/2005 DT.21/11/05 ISSUED BY THE DIRECTOR GENERAL OF ASSAM RIFLES.

EXT.P9:- TRUE COPY OF COVERING LETTER NO.GS/EDN/IV-MISC/T/2005/570 DT.21/11/05 ISSUED BY THE DIRECTOR GENERAL OF ASSAM RIFLES.

EXT.P10:- TRUE COPY OF M.A. NO.1178/05 FILED BY THE PETITIONER BEFORE CAT ERNAKULAM.

EXT.P11:- TRUE COPY OF MEDICAL DISCHARGE SLIP DT.19/12/05 ISSUED BY INHS SANEEVANI.

EXT.P12:- TRUE COPY OF REPRESENTATION DT.23/12/05 SUBMITTED BY THE PETITIONER.

EXT.P13:- TRUE COPY OF LETTER NO.A/V-A/89/PERS/JK/471 DT.10/01/2000 ISSUED BY DGAR.

RESPONDENTS' EXTS:-

EXT.R1:- TRUE COPY OF THE DIRECTORATE GENERAL ASSAM RIFLES ORDER DT.23/03/01.

EXT.R2:- TRUE COPY OF THE GOVERNMENT OF INDIA INSTRUCTIONS PUBLISHED VIDE DGP & T LETTER NO:6/28/70-DISP.1 (SPB-1) DT.05/10/1975.

EXT.R3:- TRUE COPY OF THE RELEVANT PORTION OF RULE 62 P&T MANUAL, VOLUME III.

EXT.R4:- TRUE COPY OF THE APPOINTMENT LETTER ISSUED TO THE PETITIONER BEARING NUMBER A/V-1/89/RECT/JT/235 DT.28/03/1989.

EXT.R5:- TRUE COPY OF THE APPOINTMENT LETTER ISSUED TO THE PETITIONER BEARING NUMBER A/V-1/87/RECT/ST/11 DT.21/10/1993.

EXT.R6:- TRUE COPY OF THE SOP BEARING NUMBER 1.17011/16/97/ADM-1 DT.01/09/1998.

//TRUE COPY//

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 15960 of 2005 S

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a senior teacher under the respondents. Disciplinary proceedings were initiated against him for unauthorised absence and he was compulsorily retired from service. His appeal against the said order was also rejected. So, he filed O.A.No.660/02 before the Central Administrative Tribunal, Ernakulam Bench. The said original application was allowed and the following directions were issued:

> "In the result, we set aside the whole of the enquiry proceedings as being without jurisdiction, penalty orders and appellate orders as being grossly vitiated and direct that the applicant be reinstated forthwith,

> in any case, not later than within two months from the date of issue of these orders and grant him all consequential benefits, while retaining the liberty to treat the period of unauthorised absence under Rule 17 of the Fundamental Rules or for conducting any further enquiry as may be desirable for enforcing discipline."

This writ petition is filed against the said order to the extent it gives liberty to the respondents to conduct further enquiry, as may be desirable for enforcing discipline.

2. The learned counsel for the petitioner submits that the respondents were given liberty either to proceed under Rule 17 of the Fundamental Rules or for conducting fresh disciplinary enquiry. It is further submitted that action has already been taken under Rule 17 of the Fundamental Rules and therefore, further initiation of disciplinary proceedings is impermissible.

3. If, in violation of the directions in Exhibit P1 order of the Central Administrative Tribunal, any action is taken, the petitioner can work out his remedy against it in appropriate proceedings. Since the Central Administrative Tribunal is exercising the power of judicial review of this Court in relation to service matters of the Central Government employees, the liberty given to the respondents in the impugned order must be upheld. We find no illegality or irregularity with the liberty granted to the respondents. As mentioned earlier, if any action is taken in violation of the directions in the order of the Central Administrative Tribunal, the remedy of the petitioner lies elsewhere. Since the Central Administrative Tribunal was not exercising the appellate power and only the power of judicial review, it has rightly given liberty to the respondents to proceed in accordance with law, if so advised, against the petitioner. There is

nothing for this Court to interfere with the said order.

In the result, the writ petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

29th November, 2007

(K.P.Balachandran, Judge)

tkv